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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

[Docket No. FWS-HQ-WSR-2017-0002; 91400-5110-POLI-7B; 91400-9410-POLI-7B]

RIN 1018-BA33

Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are issuing final regulations governing the Wildlife Restoration and Sport Fish Restoration financial assistance programs that include the Enhanced Hunter Education and Safety program and the Basic Hunter Education and Safety, Recreational Boating Access, Aquatic Resource Education, and Outreach and Communications subprograms. This final rule reflects targeted changes to the existing rule and is not a complete update. We proposed changes December 15, 2017, based on changes to law, regulation, policy, and practice since the last rulemaking in 2011. This final rule adds and updates definitions and eligible activities under these programs; simplifies requirements for license certification, especially for multiyear licenses; updates authorities; and clarifies how a grantee may use program income under an award. We reviewed all comments received during the comment period and made changes where necessary based on concerns and recommendations. We do not include all proposed changes in the final rule and will continue to work with partners to address those items in future policy or rulemaking.

DATES: The final rule is effective on [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments received on the proposed rule may be viewed at www.regulations.gov in Docket No. FWS–HQ–WSR–2017–0002.

FOR FURTHER INFORMATION CONTACT: Lisa Van Alstyne, Wildlife and Sport Fish Restoration Program, Branch of Policy, U.S. Fish and Wildlife Service, 703–358–1942.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2017, we published in the *Federal Register* (82 FR 59564) a proposal to revise 50 CFR part 80, “Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety.” The proposal provided a background for the Department of the Interior’s (DOI) U.S. Fish and Wildlife Service (Service) management of financial assistance programs by the Service’s Wildlife and Sport Fish Restoration Program (WSFR). The final rule revises title 50, part 80, of the Code of Federal Regulations (CFR). In addition to addressing topics that we identified since the 2011 rulemaking, the final rule includes revisions made to reflect the following laws and policies:

(a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200, December 26, 2013.

(b) Service Manual chapter 518 FW 1, “Authorities and Responsibilities,” July 25, 2014.

(c) Service Manual chapter 519 FW 2, “Compliance Requirements Summary,” October 29, 2014.

(d) Service Manual chapter 417 FW 1, “Service-Administered Audits of Grantees,” April 26, 2015.

Updates to the Regulations

This final rule is not a full update to the regulations. As described in the preamble to the proposed rule, we worked with our State partners to develop a phased approach whereby we would address a limited number of updates over multiple rulemakings, allowing our partners and the public to better engage and respond to changes. This final rule was started as the initial phase of an expected four-phase process. We have since determined that we are not able to accommodate the required process and timing needed to make the phased approach work. We will work with our partners to develop a new approach for the remaining regulatory updates, to include engagement opportunities during the prerulemaking stage.

The final rule is divided into subparts of related subject matter. This final rule only changes one full subpart, that on license certification. Other updates are at various locations within the rule.

Response to Public Comments

We solicited public comments to the proposed rule published December 15, 2017, for 60 days, ending on February 13, 2018. State fish and wildlife agencies are the primary recipients of grants affected by this rule. We received 37 comments in response to the proposed rule from 15 States, several fish and wildlife-related organizations, and the public.

In addition to proposed changes to the rule, in the preamble to the proposed rule we requested feedback on topics that we will consider for future rulemaking. This discussion starts at 82 FR 59566 in the proposed rule. We consider these topics to potentially elicit a variety of responses and offer this as an opportunity to start a national conversation. We will not respond to any comments received from the topics in the preamble, as they are not part of the rule. However, we appreciate all those who took the time to give thoughtful comments and will be

using those comments when addressing these topics in the future. They help inform us of needs, opinions, perceptions, and priorities in these programs that are integral to nationwide fish and wildlife conservation and recreation activities.

The following paragraphs discuss the substantive comments received and provide our responses to those comments. The comments are not presented verbatim and where several commenters responded with similar thoughts, we have summarized them as a single comment.

We received 23 general comments from the public. Several commenters expressed support to the changes in general, even when they made suggestions to specific sections of the rule. Some we consider nonsubstantive. This does not mean that the comments provided are not important, but rather that they do not address what is proposed in this rulemaking. We do, however, address some comments that, although they do not relate directly to the content of this rulemaking, do relate to WSFR and State fish and wildlife agency work.

General

Comment 1: One commenter cited information on the National Dam Safety Act and the importance of partnerships that ensure dam safety.

Response 1: The National Dam Safety Program Act provides funding to States and other agencies with grants administered by the Federal Emergency Management Agency. Policies for administration of those programs are at <https://damsafety.org/ManualsAndGuidelines>. Dams are real property and, according to our regulations, are titled with the State fish and wildlife agency when purchased through the Wildlife Restoration Program or Sport Fish Restoration Program. Therefore, compliance with State or any applicable Federal laws for dams acquired or built with these funds is the responsibility of the title-holding State agency.

Comment 2: The Wildlife and Sport Fish Restoration Program still bears the name of

those Congressmen who crafted the legislation all those years ago. Why is this? The implementing regulations belong to the taxpayer and should not serve as a monument to originating Congressmen.

Response 2: It has been typical throughout Congressional history to name a piece of legislation after the sponsors who championed the action or someone else who inspired the purpose of the legislation. This unofficial naming process is usually done in relation to the specific purpose that the Act supports and is not associated with other aspects of the sponsor's life. Although the original Act does not cite it as the Pittman-Robertson Wildlife Restoration Act, a major piece of legislation since then, P. Law 106-408 Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, does cite both Acts using the sponsors' names. We have no control over how Congress gives titles to Acts. However, we do appreciate and understand your concern.

Comment 3: The public isn't sufficiently engaged in the work and decisions of the State fish and wildlife agency in the commenter's State.

Response 3: We have no control over the State regulatory process nor do we control the administrative processes of the State fish and wildlife agency. We recommend contacting State officials, sharing your concerns, and seeking the various methods that your State offers for engaging in decisionmaking.

Comment 4: Commenters expressed concerns with timber harvesting, the lumber industry, forestry management, and related economic, social issues, and property concerns and, similarly, concerns surrounding endangered species.

Response 4: Although some State fish and wildlife agencies engage in forestry activities as part of wildlife management, neither this rule nor this agency addresses actions relevant to

those concerns. The U.S. Forest Service (<https://www.fs.fed.us/>), under the Department of Agriculture, would be the best contact for information on national forest management. The Service does manage endangered species laws and grant funding, but this rule does not cover those activities directly. For more information on Federal financial assistance for endangered species, visit: <https://www.fws.gov/endangered/grants/index.html>.

Comment 5: The Service should use funds under the Wildlife Restoration Act for management of all species of wildlife. The Act was written for species that are imperiled and not just for those that are hunted.

Response 5: The original Act authorized cooperation with State fish and wildlife agencies for “wildlife restoration projects” that were defined as “the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about such projects.” State fish and wildlife agencies may use their Wildlife Restoration funds for species under their control that meet the definition of “wildlife” at 50 CFR 80.2. This definition limits eligible species to birds and mammals. Some States have asked that we expand the definition to include species that are hunted in that State, but are not birds or mammals, as these species often need a management plan and those who purchase licenses to hunt those species contribute financially when they purchase a license. The topic of defining wildlife will continue to be considered, and we

appreciate this public input.

Comment 6: The regulations don't even really mention Comprehensive Management System grants, but they are a big part of the original legislation. This method seems much more efficient. Are there plans to revisit this issue in a future rulemaking?

Response 6: The original Act (50 Stat. 917, Sept. 2, 1937) does not include Comprehensive Management Plans, but uses the word "plans." We agree that the Comprehensive Management System for managing financial assistance is a method that more States could employ to administer these programs efficiently and would include periodically seeking public input. We intend to expand this information in a future rulemaking.

Comment 7: The minimum dollar amount for certifying licenses is meaningless at \$2. It doesn't reflect market reality. Aren't data available that would allow you to determine an appropriate annual price and standardize a market-based amount?

Response 7: The rules that govern financial assistance (2 CFR part 200) clarify that market value is determined on a very local level. Comparing the cost of similar licenses in different States shows that there is no national consistency, but rather each State sets prices based on the needs and desires of their State fish and wildlife agency and the public. The standard in this final rule was recommended not based on market value of a license, but rather the desire to cover administrative costs of issuing a license and having some license revenue left to the State agency. The intent is simplicity, clarity, and fairness. This standardized method accommodates all States, regardless of the State laws that govern license fees.

Comment 8: A commenter questions the Service's compliance with the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Response 8: We address both of these requirements in the "Required Determinations"

section of the preamble at 82 FR 59568, Dec. 15, 2017. Under the RFA we are required to review and consider how this rule, which governs the administration of these financial assistance programs, economically affects small entities. Under the SBREFA we assess whether the rule will have a significant economic impact on a substantial number of small entities of \$100 million or more; cause a major increase in costs or prices; or have significant adverse effects on competition, employment, investment, productivity, or innovation. As the WSFR programs and subprograms transfer money primarily to State fish and wildlife agencies, and the transfer of funds is a benefit to smaller entities that partner with the State agencies, there is no adverse effect to small entities under this rule. It is possible that some Federally funded projects, when complying with other Federal, State, or local laws, could affect small entities, but those instances are outside the purview of this rule.

Comment 9: The Humane Society of the United States emphasizes the importance of engaging with nongovernmental organizations when developing regulations.

Response 9: Executive Order (E.O.) 13563 (Jan. 18, 2011) directs Federal agencies to adopt regulations through a process that involves public participation, including, among other provisions, offering a comment period of at least 60 days.

WSFR is fully compliant with E.O. 13563. Any entities wishing to engage in future prerulemaking opportunities may do so by notifying us using information at **FOR FURTHER INFORMATION CONTACT**.

Comment 10: This proposed rule contains unanticipated changes.

Response 10: Following feedback from States that addressing the large amount of changes to 50 CFR part 80 in one rulemaking was too burdensome, in April 2016 Service staff approached the Federal/State Joint Task Force on Federal Assistance Policy (JTF) and the

Federal Aid Coordinators Working Group (FACWG) with a concept to approach updates using a phased approach. This approach would allow fewer topics per rulemaking and the ability to manage the workload over 18–24 months. The process was agreed to, and the FACWG and Regions nominated members to a Federal/State team that developed a schedule to include timing and suggested topics for each phase. The schedule was shared in September 2016 without objection, but was delayed by a few months as the topic of license certification, which was scheduled to be published as a separate rulemaking, was close to being ready to go into a proposed rule. We worked with the JTF and the Association of Fish & Wildlife Agencies (AFWA) to finalize the concepts of license certification changes and added the revised subpart to the proposed rule already developed as Phase 1. Unfortunately, the proposed rule was administratively delayed, and we were unable to maintain the recommended phased schedule for rulemaking. During the delay, much communication focused on license certification and did not reiterate all proposed changes. We will engage our partners more effectively in the future when preparing for further rulemaking.

Subpart A—General

Section 80.2 What terms do I need to know?

(1) *Asset*—New definition.

Comment 11: It is unnecessary to define “Asset” as it is already defined at 2 CFR 200.12.

Response 11: The definition at 2 CFR 200.12 is for a “capital asset,” which is a subset of the term “asset.” However, we agree that we should reference back to 2 CFR part 200 and align for ease of grant administration. We added to this definition the reference for capital asset, as it defines criteria for a capital asset. We also added the reference for equipment at 2 CFR 200.33, as it defines criteria for equipment as an asset. We also clarify that real property of any value is

an asset.

Comment 12: This expansive definition could cause States considerable challenges related to control of assets. Section 80.90(f) requires States to maintain control of all assets acquired under the grant to ensure they serve the purpose for which acquired throughout their useful life. However, a useful life is only determined for those items meeting the threshold of equipment or capital improvement. This new definition opens the door for audit findings over very minor items. Another commenter is concerned this definition is overly broad and vague and asks if there is a threshold for monetary value.

Response 12: Response 11 explains that some assets that are defined under 2 CFR part 200 have criteria that contain certain thresholds. We define the term “asset” to clarify that it can mean: (1) Either tangible (physical in nature) or intangible (not physical in nature, such as software, licenses to operate, copyrights, or usage rights), (2) Real or personal property, and (3) Must have a monetary value.

This definition is applied in § 80.90(f) where an agency is required to have “Control of all assets acquired under the grant to ensure that they serve the purpose for which acquired throughout their useful life.” In § 80.2 we define useful life as “the period during which a federally funded capital improvement is capable of fulfilling its intended purpose with adequate routine maintenance.” We further define capital improvement as amended “(i) A structure that costs at least \$25,000 to build or install; or (ii) The alteration or repair of a structure, or the replacement of a structural component, if it increases the structure’s useful life by at least 10 years or its market value by at least \$25,000.” So, when applying the term “asset” under 50 CFR 80.90(f), it relates to capital improvements and not minor items.

(2) *Capital improvement*—Updated definition. We received nine comments concerning

the definition; four expressed support.

Comment 13: A commenter recommends an even higher threshold of \$50,000.

Response 13: We have no basis to increase the threshold to \$50,000. The \$25,000 threshold is based on the limits on real property appraisals at 49 CFR 24.102(c) and other sources. We increased the threshold from \$10,000 to \$25,000 in the Boating Infrastructure Grant Program rule (80 FR 26150, May 6, 2015) and intend to apply the increased threshold to all WSFR-administered programs.

Comment 14: The paragraph in the 2011 rule that allows States to set their own definition for capital improvement was removed in the proposed rule and should be included in the final rule.

Response 14: We agree. This was an omission on our part, and we have added the paragraph back to the definition.

(3) *Geographic location*—New definition.

Comment 15: We received multiple comments on this proposed definition. Some suggest that it doesn't allow for "Statewide," regional areas, or multiple counties to be chosen, hampering the scope of projects where it is applicable. Others suggest that limiting reference to U.S. Geological Survey quadrangles doesn't allow for other identifiers and possible new technology for identifying location. Others were concerned that the language used (Ex: parcel) implies this is only for real property work.

Response 15: We agree with some of the suggestions and considered making changes in the final rule to reflect concerns. However, due to the wide variety of comments received and the connection to upcoming work for performance reporting, we decided to delay addressing this definition for future rulemaking consideration.

(4) *Match*—Updated definition.

Comment 16: Match is already defined in 2 CFR 200.29 and should be removed.

Response 16: We disagree that the definition should be removed from this rule, but agree that it should better align with the 2 CFR part 200 definition. We make changes based on this comment.

Comment 17: All definitions for match are confusing and make it appear that match must be only in-kind.

Response 17: To improve clarity, we make changes that clearly distinguish that cash and in-kind may both be used for match.

Comment 18: Commenters had concerns with the definition including a threshold for useful life as well. How should we respond to an improvement on a structure that originally didn't meet the \$25,000 threshold, but has its useful life extended by at least 10 years? It does not seem logical that increasing its useful life by any number of years would make it become a capital improvement.

Response 18: At 2 CFR 200.12, capital assets are defined as tangible or intangible assets used in operations having a useful life of more than 1 year which are capitalized in accordance with generally accepted accounting principles. Capital assets include land, buildings (facilities), equipment, and intellectual property as well as additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life. So, regardless of the cost, if it has a useful life of greater than 1 year and is capitalized as an asset, it is a capital asset. The regulations at 2 CFR 200.13 state that a capital expenditure for improvement to land and buildings includes both increase in material value and increase in useful life. The regulations at 2 CFR part 200 do not

specify what those limits are, but we set reasonable thresholds in this rule—material value being \$25,000 and increase in useful life being 10 years. So, yes, it is possible for an asset that did not originally cost \$25,000 or more and was therefore not a capital improvement, to be improved to extend the useful life by 10 or more years and it would then be a capital improvement.

Comment 19: A commenter suggested that “or its market value by at least \$25,000” be removed from the proposed definition. Market value is not needed if capital improvement is largely dependent on expenditure threshold.

Response 19: We disagree. As stated in Response 18, the regulations at 2 CFR part 200 are vague on thresholds, but we set thresholds in this rule. The regulations in 2 CFR part 200 call for both material value and useful life, so it is appropriate to include market value at the higher \$25,000 threshold.

(5) *Obligation*—New definition. One comment was received supporting this definition. We make no changes from the proposed rule.

(6) *Real property*—Updated definition.

Comment 20: Clarify the use of “some” in the sentence that states, “Examples of real property include fee, and some leasehold interests, conservation easements, and mineral rights.”

Response 20: We agree that a better explanation would be beneficial, and we replaced the second sentence with the following: “Examples of real property include fee, conservation easements, access easements, utility easements, and mineral rights. A leasehold interest is also real property except in those States where the State Attorney General provides an official opinion that determines a lease is personal property under State law.” In order for lease to be considered personal property, the Solicitor's Office of the Department of the Interior must be able to concur with this opinion.

Comment 21: A commenter objected to the change in language from “the air space above the parcel, the ground below it,” to “the space above and below it.”

Response 21: The grammatical change clarifies the sentence and restates the definition to reflect the traditional legal real property definition. We make no change based on this comment.

Comment 22: Define the terms lease, license, and permit to make the definition of “real property” more understandable.

Response 22: The term “lease” is defined at § 80.2 under the term “Lease,” the term “license” is defined at § 80.2 under the term “Personal Property” in paragraph (2)(iii). The term “permit” is defined on the Service’s web site for permits that the Service issues and is explained as, “Permits enable the public to engage in legitimate wildlife-related activities that would otherwise be prohibited by law. Service permit programs ensure that such activities are carried out in a manner that safeguards wildlife. Additionally, some permits promote conservation efforts by authorizing scientific research, generating data, or allowing wildlife management and rehabilitation activities to go forward.” (<https://www.fws.gov/permits/index.html>) We suggest a definition that is broader, as it would be applied by multiple non-Service entities: “A permit is a written authorization that allows a specific person, agency, or other entity to do something that is not forbidden by law, but is not allowed without the permit. The purpose of permits is usually to help ensure that the permittee is aware of and complies with certain laws, regulations, and conditions. Other purposes may be to raise revenue or prevent overuse of an area or a resource. The term is most often applied to an authorization issued by a governmental entity.” We will consider adding a definition in a future rulemaking.

(7) *Structure*—New definition.

Comment 23: Commenters found this definition either unnecessary or confusing.

Response 23: Due to the negative comments received and no pressing need for this definition, we decided to delay addressing this definition for future rulemaking consideration.

(8) *Technical Assistance*—New definition. Several commenters support this definition as being helpful in differentiating technical assistance from management assistance.

Comment 24: Commenters recommend the term be “technical guidance” instead of “technical assistance.” Several commenters expressed concerns that the definition is limited by targeting technical assistance to members of the public and on private lands. These commenters indicate that the definition needs to be expanded.

Response 24: A small team working on a policy topic developed this definition for technical assistance, but it is clear from comments received that we should review it with other partners before putting it in regulation. A larger review will ensure it meets the needs and expectations of grantees. We will delay including it in regulation for future rulemaking consideration, but will still include technical assistance as a new, eligible activity under 50 CFR 80.50 and 80.51. We believe that most grantees understand that technical assistance does not include actual on-the-ground management activities and will continue that approach.

Subpart D—License Holder Certification

Comment 25: Commenters strongly supported this subpart. Several commenters stated that they believe the changes will clarify and simplify the process; that even if certain license types are limited short term, the benefits outweigh this over the long term; and that the new standards are reasonable and attainable.

Response 25: We appreciate the support and the work done within a Federal/State partnership to achieve consensus on this change.

Section 80.30 Why must an agency certify the number of paid license holders?

We made no proposed changes to this section and received no comments. No change.

Section 80.31 How does an agency certify the number of paid license holders?

We made no proposed changes to this section and received no comments. No change.

Section 80.32 What is the certification period?

We made no proposed changes to this section and received no comments. No change.

Section 80.33 How does an agency decide who to count as paid license holders in the annual certification?

Comment 26: The language in this section was changed to say that a license holder is to be counted in the certification period in which the license is “sold” instead of when “first valid.” The “sold” language was problematic in the past and corrected in the 2011 rulemaking. Changing back to the old language brings the problems back. It is possible for individuals to purchase one annual license during the certification period and the next license ahead of time, but also in the same certification period. Therefore, it is imperative to use language that reflects the period for which the license is valid.

Response 26: We agree and make the change.

Comment 27: We accept the concept of license holders voluntarily purchasing a license, even if they do not participate in the activity. However, we do not agree with individuals being “forced” to purchase a license for an activity that they do not want, but that they must do in order to obtain the license that they want.

Response 27: The commenter is referring to States that do not offer individual options for all license types and combine privileges under one license purchase, even if the license holder does not want and/or need the second privilege. We have no control over this process, as these are State decisions, and we will not restrict a State’s ability to issue licenses that require a license

that gives the license holder more than one privilege, even if the additional privilege is unwanted or unneeded. As long as the license holder meets the requirements of this rule, they may be certified in the license certification period for each valid privilege.

Comment 28: We disagree with allowing States to sell only combination hunting and fishing licenses and not offer them individually. Is it the intent of the rule to allow this and to then allow those States to count each license sold as both a hunting license holder and a fishing license holder?

Response 28: It is the intent of the rule to make it clear that a State may only count an individual once during a certification period as either a hunting license holder or a fishing license holder. For example, if a State sells an individual both a small game license and a big game license, they are only counted once. However, if a State sells a combination hunting and fishing license, they may count them once as a hunter and once as an angler. This is true whether the individual chooses to purchase a combination license, or whether it is the only option offered by the State. It is not the intent of the rule to tell States whether or not they can require a license holder to purchase a combination hunting and fishing license without an option to purchase each individually.

Section 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?

Comment 29: Commenters expressed support for the new standard, but some concerns over the date when the standard would be required.

Response 29: We agree that the effective date needs to be changed and we did so. We make changes to encourage a State to adopt the new standard as soon as possible, but also to allow a State 2 years from the effective date of the rule to adopt the new standard. This will

allow States that need to revise legal requirements, policies, or documents sufficient time to do so.

Comment 30: Under the new standard our State would have more than 375,000 license holders we would not be able to count, resulting in a loss of millions of dollars in apportionments.

Response 30: After consulting with AFWA, an organization that represents all States and State Directors, they agree that giving States 2 years to make changes to bring licenses up to the minimum standard is fair and sufficient. The minimum standard of \$2/year/privilege or \$4/year for combination licenses is very low and should be able to be attained by States in order to count most licenses. If a State chooses to offer free licenses to certain groups, that is the State's choice and they will do so knowing that these license holders cannot be counted. However, we wish to point out that, in 50 CFR 80.20, "What does revenue from hunting and fishing licenses include?", hunting and fishing revenue includes not only licenses, but also State-issued permits, stamps, and tags. So, if, for example, a State offers a free hunting license to veterans and that is all they have, they cannot be counted. However, if they were to purchase a permit, stamp, or tag for \$2 or more, then they can be counted as they have met the minimum standard to be counted as a hunting license holder.

Comment 31: Question about a license that sells for \$2.90, but \$1.00 of that goes to the issuing agent and is taken by the agent prior to depositing in the agency account: Would these licenses meet the standard?

Response 31: Yes, they would meet the standard. The \$2 amount for the standard is based on research a committee authorized by AFWA conducted on the average costs to issue a license and have some income received by the State fish and wildlife agency. This research was used as

the basis for determining a fair and acceptable minimum amount. It is understood that the ratio of costs associated with issuing a license vs. the amount of license revenue received varies depending on license types and States. It is important to remember that we are no longer applying the term “net revenue.” In the scenario described in the comment, the State fish and wildlife agency receives \$2.90 and has made arrangements to pay the issuing agent in the manner described. On the State’s website, they list the price of the license as \$2.90. How the State manages the accounting and payment for services to issue the license, whether they deposit to an agency account and pay the issuing agent, or have the agent take it off the top, is an accounting process/preference and does not affect the gross amount of the license. Therefore, we consider that the State fish and wildlife agency under these circumstances has met the new standard.

Section 80.35 What additional requirements apply to certifying multiyear licenses?

In addition to addressing comments from the public for this section, we further reviewed the section and change the final paragraph (§ 80.35(g) in the final rule) to delete the requirement for States to obtain the Director’s approval of its proposed technique to decide how many multiyear license holders remain alive in the certification period. A State fish and wildlife agency must use and document a reasonable technique, but does not need Director’s approval.

We removed § 80.35(b) as explained in Response 34. As a result, we redesignate paragraphs (c) through (i) as paragraphs (b) through (h). At the newly designated § 80.35(b)(1) and (2), we inform States how to address converting multiyear licenses sold under the final rule that was effective August 31, 2011, to the new standard. At § 80.35(b)(1), we address those States that have invested the revenue collected for the license and held the funds as principle in the investment, not spending any of the amount collected. In this scenario, they have met the prior net revenue requirement through dividends from the investment and not from the revenue

collected. Therefore, they may apply the entire amount of the revenue collected using the new standard from the effective date of this final rule forward. At § 80.35(b)(2), we address those States that have invested the revenue collected for the license and that revenue has been spent, in part or in full. In this scenario, they must use the formula described to deduct the amount that would have been accounted for under the new standard from the time the license was sold until the time the State adopts the new standard. This is primarily for multiyear licenses that were sold under the rule effective August 31, 2011, due to the additional qualifications for net revenue, but may be applied to any multiyear licenses sold under 50 CFR part 80 regulations that required net revenue and that are managed under an investment strategy to meet those net revenue requirements.

Comment 32: A commenter supports allowing 80 years as a default for determining life expectancy for multiyear licenses.

Response 32: We hope that allowing this additional option will help some States to reduce burdens for tracking multiyear licenses.

Comment 33: There is a math error in the example given.

Response 33: We agree and correct the error.

Comment 34: Adjust § 80.35(b) to allow States to start counting a valid multiyear license that meets the new standard, even if it was not able to be counted in the annual license certification the year before this final rule is effective. This would be a reasonable and appropriate way to address the drastic inconsistency in the 2011 rule from the previous rule and the fairer, consistent standards now being presented.

Response 34: We reviewed prior versions of 50 CFR part 80 regarding multiyear licenses and found the following information:

In 1982: 50 CFR 80.10(c)(2) states, “Licenses which do not return net revenue to the State shall not be included. To qualify as a paid license, the fee must produce revenue for the State. Net revenue is any amount returned to the State after deducting agent or sellers fees and the cost for printing, distribution, control or other costs directly associated with the issuance of each license. (3) Licenses valid for more than one year, either a specific or indeterminate number of years, may be counted in each of the years for which they are valid; provided that: (i) The net revenue from each license is commensurate with the period for which hunting or fishing privileges are granted.”

In 2008: 50 CFR 80.10(b)(4) states, “The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal, whether it is legal for a specific or indeterminate number of years, only if: (i) The net revenue from the license is in close approximation with the number of years in which the license is legal.”

In 2011: 50 CFR 80.35(b) states, “The agency must receive net revenue from a multiyear license that is in close approximation to the net revenue received for a single-year license providing similar privileges.”

This history shows the change in the 2011 version that expanded beyond value per year to comparing the annual revenue of a multiyear license with the cost of a comparable annual license. We agree that this shift added a layer of complexity that we are resolving in this rulemaking. We also understand that including the language in the proposed rule at § 80.35(b) penalizes those multiyear licenses that were adversely affected by the 2011 change. In order to truly simplify license certification and allow for future consistency for all States’ multiyear licenses, we agree with the commenter and remove this paragraph in the final rule.

Comment 35: Some States may believe that under § 80.35(b) they are required to continue to carry forward some of the burdensome requirements for multiyear licenses needed to comply with current or past versions of the regulations.

Response 35: We agree that it should be clear that State fish and wildlife agencies may stop using past methods for accounting for multiyear licenses that may be burdensome and complicated. We allow at § 80.35(a) that State agencies must begin following the new standard for multiyear licenses sold before and after the effective date of this final rule, and at § 80.35(c) we describe how to assign value to multiyear licenses sold before adopting the new standard. The only exception would be if a State identifies financial or operational harm and follows the exception at § 80.35(c). We agree that § 80.35(b) led to confusion on this point and have removed it from the rule, redesignating the paragraphs accordingly.

Comment 36: Has the Service considered whether, if a combination license does not meet the standard of \$4 for a combination license, it may be counted at all? For instance, what if the cost of a combination license is \$3?

Response 36: Yes, the Service has considered this issue. As the privilege to hunt and the privilege to fish would both be included in the license, a State fish and wildlife agency that does not meet the minimum standard for a combination license may choose to certify those licenses as either hunting licenses only, fishing licenses only, or a combination of hunting only and fishing only as long as the numbers do not exceed total licenses sold and meet all other regulatory requirements. For example, if a State sold 1,000 combination licenses for \$3 each, it could certify 1,000 as hunting licenses only; or it could certify 1,000 as fishing licenses only; or it could certify 500 as hunting licenses only and 500 as fishing licenses only.

Comment 37: Many States are using multiyear licenses as a tool in efforts to recruit,

retain, and reactivate hunters and anglers. The language at § 80.35(b) does not support these efforts, and sportsmen and sportswomen would be discouraged to discover that their State is unable to count them as valid license holders in annual certifications due to the restrictive nature of the rule issued in August 2011.

Response 37: We agree and have removed this paragraph as described in Response 34.

Section 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?

Comment 38: We advocate that under these circumstances the State must show how much the purchaser is paying for each privilege. That way, it is clear that neither privilege is being offered “free.” Some States may force an additional privilege where the result is the ability to count an additional license holder for which it has not received additional funds. For instance, a big game license is offered for \$100, and a big game/fishing license is also being offered for \$100. We believe that the opportunity to purchase both licenses separately must exist at a higher price to show it is truly a discount.

Response 38: See Response 28. How a State determines to sell their hunting and fishing licenses is a State decision. As long as they meet the standard at § 80.34, they may count the licenses accordingly.

Section 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license, or offer a free license, under any circumstances?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.39 What must an agency do if it becomes aware of errors in its certified license data?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.40 May the Service recalculate an apportionment if an agency submits revised data?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.41 May the Director correct a Service error in apportioning funds?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

Comment 39: A commenter objected to adding “acquire equipment” as an additional activity and the associated requirements to consider lease vs. purchase. Section 80.50(a)(6) already allows acquiring equipment, so this provision seems redundant. Also, acquiring equipment is not an activity, but a tool to implement activities. Consider 2 CFR 200.313, 200.439, and 200.318 and the correlation with the addition of lease vs. purchase consideration in the rule.

Response 39: We agree that having equipment listed in two different paragraphs in this section is redundant and unclear. We therefore strike the addition of the proposed § 80.50(a)(14)

and add under § 80.50(a)(6) a new paragraph (iii) that directs grantees to refer to 2 CFR part 200 when making decisions for equipment, goods, and services. The regulations at 2 CFR 200.313(a)(1) refer to conditions of title once equipment is acquired, but supports the need for equipment to serve an authorized purpose. Sections 200.313(a)(2) and 200.439(b)(1) and (2) clarify that acquiring equipment requires prior written approval from the awarding agency. Section 200.318(d) clearly states for non-State entities, “The non-Federal entity’s procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.” In addition, § 200.301 requires that non-Federal entities must relate financial data to performance accomplishments of the Federal award and demonstrate cost-effective practices. Section 200.404 discusses reasonable costs. It is expected that this requirement of the grant proposal would address lease vs. purchase, as well as other cost elements. Section 200.405 discusses allocable costs and how to manage acquired equipment and other costs if they would support multiple purposes.

We would expect that a lease vs. purchase analysis would primarily be needed for short-term equipment needs. Specialty equipment, where lease is not an option, and equipment for long-term use may be justifiable. We believe most grantees already consider these and other options when acquiring equipment and include this as part of their standard procurement processes, so there will be very few adjustments needed. We therefore leave this specific direction out of the final rule and point to 2 CFR part 200 for guidance.

Comment 40: Use the term “Provide” for technical assistance instead of “Give.”

Response 40: We did not use the term “provide” in the proposed rule as that term is

considered bureaucratic and not plain language. However, because a few commenters recommended this change, we have done so in this final rule and will consider in a future rulemaking if another word might be substituted. We agree that the most important thing to consider is making rules clear and understandable.

Comment 41: We received several comments supporting adding payments in lieu of taxes (PILT) as eligible, and others that question including it.

Response 41: Before April 17, 2009, payments in lieu of taxes were considered allowable only in proportion to the amount contributed by a WSFR award to the total cost of acquisition. This policy was stated in Federal Aid Policy memorandum 84-3, dated Dec.12, 1983, which no longer has any official status as policy. The WSFR Policy Branch reinterpreted this issue on April 17, 2009, in response to a State's challenge of an audit finding that payments in lieu of taxes are unallowable if the lands in question had not been acquired under a Federal award. This reinterpretation is consistent with the revision of 50 CFR part 80 in August 2011 and the implementation of 2 CFR part 200 on Dec. 26, 2014, and also emphasizes that PILT is eligible only if the PILT requirements are applied uniformly across all State land management agencies, and only for that portion of PILT not paid by other sources of revenue. This approach protects State fish and wildlife agencies and WSFR funding from unfair costs. We can also reference Corrective Action Plan for the Inspector General's audit report 2003-36, E-0007 2001-2003 for the period July 99–Oct 01, and the white paper on PILT revised in April 2015. In some States these payments are required by law, and this provision clarifies that these payments may be made using WSFR funds without conflict. States are not required to make payments in lieu of taxes when there is no legal obligation to do so. We are moving this policy that has been in effect for 9 years into regulation. Supporting information is posted on the FA Wiki at:

<https://fawiki.fws.gov/display/WSFR/Payment+in+Lieu+of+Taxes+%28PILT+or+PILOT%29+-+WSFR>

Comment 42: Use the term “acquire” instead of “buy” when referring to equipment and real property.

Response 42: We agree and make applicable changes in the final rule.

Comment 43: Include “acquire real property for firearm and archery ranges” under both Basic Hunter Education and Enhanced Hunter Education programs.

Response 43: We agree and make the change.

Comment 44: Some of the items listed in this section are activities and others are items that support activities. Perhaps more thought can be given on how to present this information.

Response 44: We appreciate this comment and will thoughtfully consider how we present this information as part of a future rulemaking.

Section 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

The additional eligible items we proposed at § 80.51 that apply to the Sport Fish Restoration Program are the same additions as we proposed at § 80.50 for the Wildlife Restoration Program, except for Hunter Education. No unique comments were received for this section. We received comments on the addition of equipment and the requirement to consider purchase vs. lease (see Comment and Response 39), which we address similarly by removing proposed § 80.51(a)(14) and adding paragraph (iii) to § 80.51(a)(8). We received comments to change “Give” to “Provide” at § 80.51(a)(12) (see Comment and Response 40), and we ensured that we use the term “acquire” instead of “buy” regarding equipment (see Comment and Response 42). We also received comments regarding payment in lieu of taxes (see Comment and

Response 41).

Section 80.56 What does it mean for a project to be substantial in character and design?

We discuss comments on the proposed revisions and provide responses below. The decisions we make in addressing these comments collectively results in no changes from the current regulations.

Comment 45: The sentence at § 80.56(a), “Projects may have very different components and still be substantial in character and design,” appears to serve no purpose, or is at least unclear what the purpose is.

Response 45: We have received information that indicates that States have been breaking projects apart and submitting separate grants for different components of a project because of the perception that a project that contained various components—for example, a land acquisition, construction, and operation and maintenance—would not be viewed together as substantial in character and design if all were included in one grant proposal. Adding this sentence was intended to clarify that these projects may be included in one grant proposal, if a State chooses to do so, and still meet the requirement for being substantial in character and design. As this is not a requirement and did not lend the expected clarity, we remove this sentence and will manage administratively. If States have questions they should contact their Regional WSFR Office.

Comment 46: Remove the word “measurable” from § 80.56(b)(2): “States a purpose and sets measurable objectives, both of which you base on the need.” One commenter stated it is not needed because the word “quantified” is used at § 80.82(b)(3) when defining objectives. One commenter questioned if this was intentional and, if so, how a research project would be measured. Other comments stated that not every grant objective can be defined in measurable terms and States should be given flexibility when determining objectives.

Response 46: We disagree that the inclusion of the word “measurable” doesn’t add value and suggest that it supports the concept of substantial in character and design. This is also supported by the requirements at 2 CFR 200.301, “Performance measurement,” that state, “The recipient's (grantees) performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices.” Tracking and Reporting Actions for the Conservation of Species (TRACS) is the tracking and reporting system for conservation and related actions funded by the WSFR Program. A Federal/State team called the TRACS Working Group was established in May 2014, in part to set national standards for what information States would enter into TRACS. One of the agreed standards is Specific, Measurable, Achievable, Relevant, and Time Bound (S.M.A.R.T.) objectives. However, we will remove the word “measurable” in this section and consider adding all S.M.A.R.T. objective components in a future rulemaking. We will also consider in a future rulemaking if changes should be made at § 80.82(b)(3) or other sections of the rule to better align information and requirements.

Regarding research projects, 2 CFR 200.76, “Performance goal,” gives some further guidance for this when stating, “Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).” The regulations at 2 CFR 200.87 define “research” as “a systematic study directed toward fuller scientific knowledge or understanding of the subject studied.” The regulations at 2 CFR 200.210(d) explain as Federal Award Performance Goals that “The Federal awarding agency must include in the Federal award

an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured.” Whatever the focus of the award, it is clear that there must be some measurable objective, but that depending on the project there is flexibility in what the measure might be.

Comment 47: The evaluation of cost effectiveness is relative and requires consideration of many variables. This is likely to be arbitrary if determined by WSFR staff. True cost effectiveness should be evaluated by economists, which would be a burden. Moreover, many wildlife-related activities are valued in non-financial ways, making it even more difficult.

Response 47: The requirements at 2 CFR 200.301 include, “the Federal awarding agency must require the recipient [grantee] to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices.” We are not requiring that recipients engage economists to determine this measure, but that they consider and address as appropriate for the award. Cost-effectiveness does not necessarily mean using the cheapest option, as the cheapest option might not be the best for a successful project. Cost-effectiveness may consider multiple benefits, including those that are

values driven. Cost considerations may also determine that paying more for something because it will improve useful life, management, accessibility, etc., is a good investment. We considered alternative language to explain cost-effectiveness, but believe that States are already addressing this issue when showing costs are necessary and reasonable, which supports a project being substantial in character and design. No changes are made based on this comment.

Section 80.82 What must an agency submit when applying for a project-by-project grant?

Comment 48: We are uncertain as to whether at the proposed § 80.82(c)(10), “Budget Narrative,” the schedule of payments for projects that use funds from two or more annual apportionments is meant to apply to the acquisition of capital improvements and equipment, or if it is meant to apply to all projects. It is typical for our State to write 2-year grants for our projects with status of available fund conditions. The exact funding of these projects is never determined until the apportioned funds are available. This has been an efficient method of managing the apportionment, and we would not want to have to in advance determine apportionment allocation among other grants.

Response 48: The content at § 80.82(c)(10) was not changed from the current rule. Rather, this subparagraph was reformatted to pull out the three items under Budget Narrative as (i), (ii), and (iii), instead of a single sentence. We understand that a budget is an estimate and certain projections are made, and that available funds in a future grant period could alter a multiyear budget. As this section is not changed, there is no requirement to make changes in current, approved procedures.

Comment 49: Why do you propose separating “Purpose” and “Objective?” If it is related to real property and the purpose for which land is acquired, we recommend addressing this in the real property chapters instead of the rule.

Response 49: We separate purpose and objective to clarify that they are two discrete concepts that have often been addressed as a single concept. This clarifies what information each is intended to convey. The regulations at 2 CFR part 200 demonstrate a preference for using the term “objective” in relation to costs, and for using “goal” as we use the term “objective”; however, “objective” is used at various locations when discussing project or program objectives. The regulations at § 200.76 state, “Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate,” aligning “goal” to “objective” and not relating it to purpose. In several locations at 2 CFR part 200, performance is measured in relation to whether goals/objectives are achieved, so it is important to clearly define objectives.

Comment 50: A commenter suggests editing § 80.82(c)(9)(iv) to read as follows: “Indicate whether the agency wants to treat program income that it earns after the grant period as either: (a) license revenue; or (b) additional funding for purposes consistent with the grant terms and conditions or program regulations” (i.e., adding the phrase “as either”). This would help eliminate confusion.

Response 50: We agree this language should be clarified and make changes.

Comment 51: At § 80.82(b)(10)(ii), if the State agency’s threshold for capital improvement is less than the amount defined at § 80.2, is prior approval required?

Response 51: No. If a capital improvement meets the State agency standard, but is lower than the standard in this rule, prior approval is not required.

Section 80.85 What requirements apply to match?

Comment 52: Clarify the term “in-kind,” as it is not consistently understood and often

misused.

Response 52: Although we had proposed revisions to § 80.85, we have decided not to change this section in this final rule. Instead, we adjust the definition of “match” at § 80.2 to better align with 2 CFR part 200 and to address this concern.

Section 80.97 How may a grantee charge equipment use costs to a WSFR-funded project?

Comment 53: We received several comments in regard to this section:

(1) Clarify that this section refers to State fish and wildlife agency rates for equipment it owns.

(2) Clarify at § 80.97(b) in the second sentence that “agency” refers to the State agency.

(3) Using U.S. Army Corps of Engineers rates has proven to be problematic, and we suggest additional resources be devoted to identifying alternative, practical methods.

(4) This section appears to be in conflict with 2 CFR part 200.

(5) State fish and wildlife agencies work with multiple Federal agencies and having different rules for each agency is problematic.

(6) This part of the rule is very restrictive to State fish and wildlife agencies.

(7) Sometimes another State entity outside the fish and wildlife agency is involved in the process, which makes it complicated.

(8) Requiring a State fish and wildlife agency to develop its own rates is an unfair burden.

(9) We question the disparity between State fish and wildlife agencies and subgrantees.

(10) This is the first official specification we have seen requiring a by-agency rate.

(11) It is unclear how a State fish and wildlife agency cannot charge costs of equipment to another grant but can charge operating costs to a future grant.

(12) We do not understand why another State agency cannot establish a rate that we can then use.

(13) We recommend that the Federal agency develop rates for States to use.

Response 53: WSFR first issued guidance on this topic on December 23, 2014, to comply with the requirements at 2 CFR part 200 (see Comment 53, item 10). We received comments from States that indicated it was an extreme burden for subgrantees that are small entities to develop their own rates, so we updated the guidance on October 21, 2016, to allow greater flexibility for subgrantees. The major difference for subgrantees is allowing them to use the State fish and wildlife agency rate, instead of having to determine their own rate. This still meets all the criteria under 2 CFR part 200 (see Comment 53, item 9). Once established, these equipment rates should be accepted by any other Federal programs in which a State fish and wildlife agency may participate, as if done properly they will fully comply with 2 CFR part 200 (see Comment 53, items 5 and 6). It is acceptable for a Statewide administrative agency to set rates, as long as when setting rates for the State fish and wildlife agency they only consider equipment types that are typical for use by the State fish and wildlife agency. A generic Statewide rate would include specialty equipment from other State agencies that could inappropriately proportion costs to the State fish and wildlife agency. In contrast, State fish and wildlife agencies also use specialty equipment that should be appropriately considered when determining rates, so that the agency receives sufficient credit for specialized equipment. A Statewide administrative entity should be fully equipped to perform this type of assessment (see Comment 53, items 7 and 12).

Regarding burden, we clarify here that, once established, rates should be valid for several years and the base analysis would serve to make any future updates easier to accomplish (see Comment 53, item 8). Regarding other, alternate resources for determining rate schedules,

according to 2 CFR part 200, rates must reflect local market rates and equipment that agencies use, so a strictly national rate would not comply with 2 CFR part 200. If a State were to identify a rate schedule developed by an organization or entity that it feels might comply with 2 CFR part 200 and be used instead of their self-determined rates, WSFR Headquarters staff will, upon request, review to determine if it complies. However, WSFR does not have the resources to independently set forth on a project to set and update local rates for all States (see Comment 53, items 3 and 13). Comment 53, item 11, seeks clarity on process and comment 53, items 1 and 2, recommend edits. However, due to the apparent need for additional education and understanding on this topic, we have determined not to include these proposed changes in the final rule. We will continue to follow the current WSFR guidance and 2 CFR part 200. We will evaluate the issue and associated needs and communicate with State fish and wildlife agencies for additional opportunities to better understand these requirements.

Section 80.98 May an agency barter goods or services to carry out a grant-funded project?

We received no comments on this section of the proposed regulations and made no changes in the final rule.

Section 80.120 What is program income?

We amend § 80.120(c)(5) to align with 2 CFR 200.307(d).

Comment 54: At § 80.120(b)(5) hunter education course fees are listed as program income, but at § 80.120(c)(3) cash received for incidental costs is not program income. These are not clearly distinguished and could cause confusion. One commenter thought we were removing § 80.120(c)(3), which we are not.

Response 54: We accept the comments requesting further clarity. We added a sentence to § 80.120(a) after defining program income to include, “Upon request from the State agency and

approval of the Service, the option at 2 CFR 200.307(b) may be allowed.” This option is: “If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.” This provision clarifies that a State agency may choose to apply net program income instead of gross program income. We expanded § 80.120(b)(5) to include fees collected by the agency for delivering or providing hunter education, aquatic education, or other courses. This change clarifies that if an agency partners or contracts with another entity and the partner or vendor collects fees that do not go to the State agency, it is not program income. It also clarifies that the courses may be more than just hunter education, but any courses a State may offer under these programs. We expanded § 80.120(c)(3) not only to apply these incidental costs to all offered training, but also to explain that incidental costs are small amounts and typically not essential to training delivery. For example, if there is no fee for a course, but the agency sells each participant a workbook at cost for \$5, that is incidental and not program income. If a class offers food and drink to attendees who are then asked to contribute to the cost, that is an incidental cost and not program income.

Section 80.123 How may an agency use program income?

Comment 55: Clarify the change at § 80.123 to say that program income must be spent within the grant period and program in which it is earned before requesting additional Federal funds for the activity for which the program income is earned. Otherwise, it could be misinterpreted to mean that an agency may not request any Federal funds, even if from another project or program, unless that program income is expended first.

Response 55: We concur with this suggestion and make changes. We also make additional changes to this section to reflect some of the flexibility we announced earlier this year

for increased use of the cost-sharing program income method. At § 80.123(a) we change the word “method” to “methods” to indicate that a State agency may indicate its intention to use more than one method for program income. We add the next sentence that includes the clarification for when program income must be spent and designate as § 80.123(b). We designate the table that describes the three methods for applying program income as § 80.123(c) and make changes to align with 2 CFR part 200 and other sections of 50 CFR part 80. We remove the existing § 80.123(c), which gives additional criteria for using the cost-sharing method for program income, which we no longer require. These changes align to 2 CFR part 200 and give State agencies greater latitude in using program income.

Section 80.124 How may an agency use unexpended program income?

We received no comments on this section of the proposed regulations. However, we have changed the language from the proposed rule for clarification. We moved the requirement in the last sentence to the beginning of the section and associated it with an award and not “activities.” This revision clarifies that spending program income before requesting additional payments is specific to the award and not to “activities,” which could be confused to mean the same activities under other awards.

Section 80.134 Is a lease considered real property or personal property?

Comment 56: We received comments that reflect three concerns: (1) This section seems to contradict 2 CFR 200.59 regarding intangible property; (2) it is unclear how this relates to land database requirements; and (3) this question and answer read more like a definition.

Response 56: There are two separate concepts that are getting confused. The regulations at 2 CFR 200.59 state, “Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and

other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).” There is a difference between a lease agreement and the land associated with a lease. The lease agreement is intangible, but the land associated with the lease agreement is tangible. However, that is not the question here. The question here is whether a lease is real or personal property. The intangible lease agreement, along with the tangible property it relates to, are together treated as real property. This is supported by WSFR’s Solicitor who wrote in an opinion that true leases are considered real property, unless a State Attorney General provides an official written decision indicating otherwise.

The second comment regarding the land database requirements is not a topic we intend to address in rulemaking. The commenter should discuss this issue with Regional WSFR staff. In regard to the comment that this question and answer reads more like a definition, Federal regulatory agencies should not include substantive regulatory provisions in a definition, but definitions may be included within the body of the rule, especially if they add clarity or are not used in more than one section of the rule. No comments objected to the answer to the question, but due to the confusion surrounding tangible vs. intangible property and real vs. personal property, we will not include this issue in the final rule and will address in future policy work, while concentrating on clarifying all aspects of the topic.

Section 80.136 What standards must an agency follow when conducting prescribed fire on land acquired with financial assistance under the Acts?

Comment 57: Why is the Service proposing a new section that instructs States what not to do, and why is it in the real property section? Also, please explain “substantial involvement.”

Response 57: The Service’s Branch of Fire Management is responsible for developing and maintaining the policy that includes controlled burns. In September 2005 the Joint

Federal/State Task Force on Federal Assistance Policy (JTF) discussed the topic of controlled burns conducted by States using WSFR funds and a proposed update to the policy. The Service's Solicitor's Office and WSFR Policy staff worked with the Branch of Fire Management on this topic. The States wanted clarity, as often acceptance of Federal funds means compliance with Federal requirements. The determination was that a State conducting such actions on non-Federal land without substantial involvement from a Federal entity does not have to follow the Service policy on controlled burns. This determination was documented in a Director's Memo, "Prescribed Burning Off-Service Lands: Clarification of the Sept. 16, 2005, Addendum to the Fish and Wildlife Service Fire Management Handbook" issued on March 29, 2007. The addendum states: "When conducting prescribed burning off Service lands under a Service-administered grant agreement, State fish and wildlife agencies: (a) must comply with existing State protocols that include compliance with pertinent Federal, State, and local laws; and (b) do not have to comply with any requirements of the Fish and Wildlife Service Fire Management Handbook provided that the Service does not have "substantial involvement" in the project, as provided in 31 U.S.C. 6301–6308. Therefore, if these requirements are met, State grantees under a Service-administered grant agreement do not have to submit documentation under the grant agreement to reflect compliance with requirements of the *Fish and Wildlife Service Fire Management Handbook*." The purpose of adding this section to the rule is to institutionalize this information in program regulations, a location directly applicable to these programs, as it would not be typical for grantees to refer to Service Manual chapters outside of WSFR.

Substantial involvement is what distinguishes a grant from a cooperative agreement per the Federal Grant and Cooperative Agreement Act of 1977 (P. Law 95-224, Feb. 3, 1978). Per OMB guidance (43 FR 36860, August 18, 1978), the basic statutory criterion for distinguishing

between grants and cooperative agreements is that for the latter, substantial involvement is anticipated between the executive agency and the grantee during performance of the contemplated activity. The Code of Federal Regulations (CFR) further describes “substantial involvement” is a relative, rather than an absolute, concept, and that it is primarily based on programmatic factors, rather than requirements for grant or cooperative agreement award or administration. For example, substantial involvement may include collaboration, participation, or intervention in the program or activity to be performed under the award (32 CFR 22.215(b)). Grants.gov also addresses that, in general terms, “substantial involvement” refers to the degree to which Federal employees are directly performing or implementing parts of the award program. In a grant, the Federal Government more strictly maintains an oversight and monitoring role. In a cooperative agreement, Federal employees participate more closely in performing the program. When you read “cooperative,” think working “side-by-side.”

(<https://blog.grants.gov/2016/07/19/what-is-a-cooperative-agreement/>) This concept has been around for decades, and Federal grant managers are trained to make these decisions.

Traditionally, most awards under this rule are made using the instrument of a grant, and not a cooperative agreement. Cooperative agreements are allowed, but rarely done, as the majority of projects are conducted under the control of the State fish and wildlife agency without Federal staff having an active role. This proposed new section was located in the real property section because it involves land activities.

However, due to the concerns raised by comments to this section, we will not include this new section in the final rule and will consider for future rulemaking.

Section 80.139 What if real property is no longer useful or needed for its original purpose?

Comment 58: Recommend changing the term “grant-funded” to “grant-acquired.”

Response 58: We agree and make the change.

Comment 59: Recommend removing any reference to personal property as it is confusing in a section focused on real property.

Response 59: We agree and make the change.

Section 80.140 When the Service approves the disposition of real property, equipment, intangible property, and excess supplies, what must happen to the proceeds of the disposition?

Comment 60: We received several comments on this section that address § 80.140(c) and clarifying any relationship between disposition and program income, confusion because real and personal property are addressed together in this section, questions on WSFR-funded vs. license revenue-funded assets, how this section relates to 2 CFR part 200 and State assent legislation, and specific questions related to various scenarios.

Response 60: We concur that disposition is a complicated topic and understand combining real and personal property, and all of the nuances of both the program and 2 CFR part 200, can lead to confusion as written. We will not make any changes to the final rule based on these proposed changes and will pursue this issue in future policy work.

Section 80.160 What are the information collection requirements of this part?

We received no comments on this section; however, since the proposed rule was published, WSFR has a new OMB Control Number for information collections. We updated the final rule to reflect this change.

Required Determinations

Regulatory Planning and Review(Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Regulatory Flexibility Act requires an agency to consider the impact of rules on small entities, i.e., small businesses, small organizations, and small government jurisdictions. If there is a significant economic impact on a substantial number of small entities, the agency must perform a regulatory flexibility analysis. This analysis is not required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this final rule's potential effects on small entities as required by the Regulatory Flexibility Act. We have determined that this final rule does not have a significant

impact and does not require a regulatory flexibility analysis because it:

a. Gives information to State fish and wildlife agencies that allows them to apply for and administer financial assistance more easily, more efficiently, and with greater flexibility. Only State fish and wildlife agencies may receive Wildlife Restoration, Sport Fish Restoration, and Hunter Education program and subprogram grants.

b. Addresses changes in law and regulation. This rule helps applicants and grantees by making the regulations consistent with current authorities and standards.

c. Rewords and reorganizes the regulations to make them easier to understand.

d. Allows small entities to voluntarily become subgrantees of agencies, and any impact on these subgrantees would be beneficial.

The Service has determined that the changes primarily affect State governments and any small entities affected by the changes voluntarily enter into mutually beneficial relationships with a State agency. They are primarily concessioners and subgrantees, and the impact on these small entities will be very limited and beneficial in all cases.

Consequently, we certify that because this final rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

In addition, this final rule is not a major rule under SBREFA (5 U.S.C. 804(2)) and will not have a significant impact on a substantial number of small entities because it will not:

a. Have an annual effect on the economy of \$100 million or more;

b. Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based

enterprises.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The Act requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of regulations with Federal mandates that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year.

We have determined the following under the Unfunded Mandates Reform Act:

a. As discussed in the determination for the Regulatory Flexibility Act, this final rule will not have a significant economic effect on a substantial number of small entities.

b. The regulation does not require a small government agency plan or impose any other requirement for expending local funds.

c. The programs governed by the final rule potentially assist small governments financially when they occasionally and voluntarily participate as subgrantees of an eligible agency.

d. The final rule clarifies and improves upon the current regulations allowing State, local, and tribal governments and the private sector to receive the benefits of financial assistance funding in a more flexible, efficient, and effective manner.

e. Any costs incurred by a State, local, or tribal government or the private sector are voluntary. There are no mandated costs associated with the final rule.

f. The benefits of grant funding outweigh the costs. The Federal Government may legally provide up to 100 percent funding for grants to Puerto Rico and the District of Columbia. The

Federal Government will also waive the first \$200,000 of match for each grant to the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. Of the 50 States and 6 other jurisdictions that voluntarily are eligible to apply for grants in these programs each year, all participate. This is clear evidence that the benefits of this grant funding outweigh the costs.

g. This final rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

This final rule will not have significant takings implications under E.O. 12630 because it will not have a provision for taking private property. Real property acquisitions under these programs is done with willing sellers only. Therefore, a takings implication assessment is not required.

Federalism

This final rule will not have sufficient Federalism effects to warrant preparing a federalism summary impact statement under E.O. 13132. It would not interfere with the States’ ability to manage themselves or their funds. We work closely with the States administering these programs. They helped us identify those sections of the current regulations needing further consideration and new issues that prompted us to develop a regulatory response.

Civil Justice Reform

The Office of the Solicitor has determined under E.O. 12988 that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The final rule will help grantees because it:

- a. Updates the regulations to reflect changes in policy and practice and recommendations

received during the past 7 years;

b. Makes the regulations easier to use and understand by improving the organization and using plain language;

c. Modifies the final rule to amend 50 CFR part 80 published in the *Federal Register* at 76 FR 46150 on August 1, 2011, based on subsequent experience; and

d. Adopts recommendations on new issues received from State fish and wildlife agencies. We reviewed all comments on the proposed rule and considered all suggestions when preparing the final rule for publication.

Paperwork Reduction Act (PRA)

This final rule does not contain new information collection requirements that require approval under the PRA (44 U.S.C. 3501 et seq.). OMB reviewed and approved the U.S. Fish and Wildlife Service application and reporting requirements associated with the Wildlife Restoration, Sport Fish Restoration, and Hunter Education & Safety financial assistance programs and assigned OMB Control Number 1018–0100, which expires July 31, 2021. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

We have analyzed this final rule under the National Environmental Policy Act (42 U.S.C. 4321 et seq.), 43 CFR part 46, and part 516 of the Departmental Manual. This rule is not a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes given at 43 CFR 46.210(i).

Government-to-Government Relationship with Tribes

We have evaluated potential effects on federally recognized Indian tribes under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2. We have determined that there are no potential effects. This final rule will not interfere with the tribes' ability to manage themselves or their funds.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use, and requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866 and does not affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 80

Fish, Grant programs, Natural resources, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

Final Regulation Promulgation

For the reasons discussed in the preamble, we amend title 50 of the Code of Federal Regulations, chapter I, subchapter F, part 80, as follows:

PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS

1. The authority citation for part 80 is revised to read as follows:

AUTHORITY: 16 U.S.C. 669–669k and 777–777n, except 777e-1 and g-1.

Subpart A—General

2. Amend § 80.2 by:

- a. Adding in alphabetical order a definition for “Asset”;
- b. Revising the definition of “Capital improvement”;
- c. Removing the definition of “Match”;
- d. Adding in alphabetical order definitions for “Match or cost share” and “Obligation”;

and

- e. Revising the definition of “Real property”.

The additions and revisions read as follows:

§ 80.2 What terms do I need to know?

* * * * *

Asset means all tangible and intangible real and personal property of monetary value.

This includes *Capital assets* as defined at 2 CFR 200.12, *Equipment* as defined at 2 CFR 200.33, and real property of any value.

Capital improvement or capital expenditure for improvement means:

(1) A structure that costs at least \$25,000 to build, acquire, or install; or the alteration or repair of a structure or the replacement of a structural component, if it increases the structure’s useful life by at least 10 years or its market value by at least \$25,000.

(2) An agency may use its own definition of capital improvement if its definition includes all capital improvements as defined here.

* * * * *

Match or cost share means the non-Federal portion of project costs or value of any non-

Federal in-kind contributions of a grant-funded project, unless a Federal statute authorizes match using Federal funds. Match must meet the requirements at 2 CFR 200.306(b)(1)–(7).

Obligation has two meanings depending on the context:

(1) When a grantee of Federal financial assistance commits funds by incurring costs for purposes of the grant, the definition at 2 CFR 200.71 applies.

(2) When the Service sets aside funds for disbursement immediately or at a later date in the formula-based programs under the Acts, the definition at 50 CFR 80.91 applies.

* * * * *

Real property means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water. Examples of real property include fee, conservation easements, access easements, utility easements, and mineral rights. A leasehold interest is also real property except in those States where the State Attorney General provides an official opinion that determines a lease is personal property under State law.

(1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically affixed to it by a natural process or human action. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.

(2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel's owner to travel across an adjacent parcel.

(3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it. For example, a grazing permit is often incorrectly labeled a lease, which can be real property, but most grazing permits are actually licenses, which are not real

property.

* * * * *

3. Revise subpart D to read as follows:

Subpart D—License Holder Certification

Sec.

80.30 Why must an agency certify the number of paid license holders?

80.31 How does an agency certify the number of paid license holders?

80.32 What is the certification period?

80.33 How does an agency decide who to count as paid license holders in the annual certification?

80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?

80.35 What additional requirements apply to certifying multiyear licenses?

80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?

80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?

80.38 May an entity other than the State fish and wildlife agency offer a discount on a license, or offer a free license, under any circumstances?

80.39 What must an agency do if it becomes aware of errors in its certified license data?

80.40 May the Service recalculate an apportionment if an agency submits revised data?

80.41 May the Director correct a Service error in apportioning funds?

Subpart D—License Holder Certification

§ 80.30 Why must an agency certify the number of paid license holders?

A State fish and wildlife agency must certify the number of people having paid licenses to hunt and paid licenses to fish because the Service uses these data in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States.

§ 80.31 How does an agency certify the number of paid license holders?

(a) A State fish and wildlife agency certifies the number of paid license holders by responding to the Director's annual request for the following information:

(1) The number of people who have paid licenses to hunt in the State during the State-specified certification period (certification period); and

(2) The number of people who have paid licenses to fish in the State during the certification period.

(b) The agency director or his or her designee:

(1) Must certify the information at paragraph (a) of this section in the format that the Director specifies;

(2) Must provide documentation to support the accuracy of this information at the Director's request;

(3) Is responsible for eliminating multiple counting of the same individuals in the information that he or she certifies; and

(4) May use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose.

(c) If an agency director uses statistical sampling to eliminate multiple counting of the same individuals, he or she must ensure that the sampling is complete by the earlier of the following:

(1) Five years after the last statistical sample; or

(2) Before completing the first certification following any change in the licensing system that could affect the number of license holders.

§ 80.32 What is the certification period?

A certification period must:

(a) Be 12 consecutive months;

(b) Correspond to the State's fiscal year or license year;

(c) Be consistent from year to year unless the Director approves a change; and

(d) End at least 1 year and no more than 2 years before the beginning of the Federal fiscal year in which the apportioned funds first become available for expenditure.

§ 80.33 How does an agency decide who to count as paid license holders in the annual certification?

(a) A State fish and wildlife agency must count only those people who have a license issued:

(1) In the license holder's name; or

(2) With a unique identifier that is traceable to the license holder, who must be verifiable in State records.

(b) A State fish and wildlife agency must count a person holding a single-year license only once in the certification period in which the license first becomes valid. (Single-year licenses are valid for any length of time less than 2 years.)

(c) A person is counted as a valid license holder even if the person is not required to have a paid license or is unable to hunt or fish.

(d) A person having more than one valid hunting license is counted only once each certification period as a hunter. A person having more than one valid fishing license is counted only once each certification period as an angler. A person having both a valid hunting license and a valid fishing license, or a valid combination hunting/fishing license, may be counted once each certification period as a hunter and once each certification period as an angler. The license holder may have voluntarily obtained them or was required to have them in order to obtain a different privilege.

(e) A person who has a license that allows the license holder only to trap animals or only

to engage in commercial fishing or other commercial activities must not be counted.

§ 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?

(a) For the State fish and wildlife agency to certify a license holder, the agency must establish that it receives the following minimum gross revenue:

(1) \$2 for each year the license is valid, for either the privilege to hunt or the privilege to fish; and

(2) \$4 for each year the license is valid for a combination license that gives privileges to both hunt and fish.

(b) A State fish and wildlife agency must follow the requirement in paragraph (a) of this section for all licenses sold as soon as practical, but no later than [INSERT DATE 30 DAYS AND 2 YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) A State may apply these standards to all licenses certified in the license certification period that this rule becomes effective.

§ 80.35 What additional requirements apply to certifying multiyear licenses?

The following additional requirements apply to certifying multiyear licenses:

(a) A State fish and wildlife agency must follow the requirement at § 80.34(a) for all multiyear licenses sold before and after the date that the agency adopts the new standard, unless following the exception at paragraph (c) of this section.

(b) If an agency is using an investment, annuity, or similar method to fulfill the net-revenue requirements of the version of § 80.33 that was effective from August 31, 2011, or any prior rule that required net revenue, until [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER], the agency must discontinue that method and convert to the new standard, unless following the exception at paragraph (c) of this section.

(1) If the revenue collected at the time of sale has not been spent, the agency must begin to use the new standard by applying the total amount the agency received at the time of sale.

(2) If the revenue collected at the time of sale has been spent, the agency must apply the new standard as if it were applicable at the time of sale. For example, if a single-privilege, multiyear license sold for \$100 in 2014, and the agency adopts the new standard in 2018, then 4 years have been used toward the amount received by the agency ($4 \text{ years} \times \$2 = \8) and the license holder may be counted for up to 46 more years ($\$100 - \$8 = \$92/\$2 = 46$).

(c) An agency may continue to follow the requirements of the version of § 80.33 that was effective from August 31, 2011, or any prior rule that required net revenue, until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], for those multiyear licenses that were sold before the date specified at § 80.34(b) if the agency:

(1) Notifies the Director of the agency's intention to do so;

(2) Describes how the new requirement will cause financial or operational harm to the agency when applied to licenses sold before the effective date of these regulations; and

(3) Commits to follow the current standard for those multiyear licenses sold after the date specified at § 80.34(b).

(d) A multiyear license may be valid for either a specific or indeterminate number of years, but it must be valid for at least 2 years.

(e) The agency may count the license for all certification periods for which it received the minimum required revenue, as long as the license holder meets all other requirements of this subpart. For example, an agency may count a single-privilege, multiyear license that sells for \$25

for 12 certification periods. However, if the license exceeds the life expectancy or the license is valid for only 5 years, it may be counted only for the number of years it is valid.

(f) An agency may spend a multiyear license fee as soon as the agency receives it.

(g) The agency must count only the licenses that meet the minimum required revenue for the license period based on:

(1) The duration of the license in the case of a multiyear license with a specified ending date; or

(2) Whether the license holder remains alive.

(h) The agency must use and document a reasonable technique for deciding how many multiyear-license holders remain alive in the certification period. Some examples of reasonable techniques are specific identification of license holders, statistical sampling, life-expectancy tables, and mortality tables. The agency may instead use 80 years of age as a default for life expectancy.

§ 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?

If a State fish and wildlife agency receives funds from the State or other entity to cover fees for some license holders, the agency may count those license holders in the annual certification only under the following conditions:

(a) The State funds to cover license fees must come from a source other than hunting- and fishing-license revenue.

(b) The State must identify funds to cover license fees separately from other funds provided to the agency.

(c) The agency must receive at least the average amount of State-provided discretionary

funds that it received for the administration of the State's fish and wildlife agency during the State's 5 previous fiscal years.

(1) State-provided discretionary funds are those from the State's general fund that the State may increase or decrease if it chooses to do so.

(2) Some State-provided funds are from special taxes, trust funds, gifts, bequests, or other sources specifically dedicated to the support of the State fish and wildlife agency. These funds typically fluctuate annually due to interest rates, sales, or other factors. They are not discretionary funds for purposes of this part as long as the State does not take any action to reduce the amount available to its fish and wildlife agency.

(d) The agency must receive and account for the State or other entity funds as license revenue.

(e) The agency must issue licenses in the license holder's name or by using a unique identifier that is traceable to the license holder, who is verifiable in State records.

(f) The license fees must meet all other requirements in this part.

§ 80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?

Yes. A State fish and wildlife agency may certify a license that is sold at a discount when combined with another license or privilege as long as the agency meets the rules for minimum revenue at § 80.34 for each privilege.

§ 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license, or offer a free license, under any circumstances?

(a) An entity other than the agency may offer the public a license that costs less than the regulated price and a State fish and wildlife agency may certify the license holder only if:

- (1) The license is issued to the individual according to the requirements at § 80.33;
- (2) The amount received by the agency meets all other requirements in this subpart; and
- (3) The agency agrees to the amount of revenue it will receive.

(b) An entity other than the agency may offer the public a license that costs less than the regulated price without the agency agreeing, but must pay the agency the full cost of the license.

§ 80.39 What must an agency do if it becomes aware of errors in its certified license data?

A State fish and wildlife agency must submit revised certified data on paid license holders within 90 days after the agency becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if it becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

§ 80.40 May the Service recalculate an apportionment if an agency submits revised data?

The Service may recalculate an apportionment of funds based on revised certified license data under the following conditions:

(a) If the Service receives revised certified data for a pending apportionment before the Director approves the final apportionment, the Service may recalculate the pending apportionment.

(b) If the Service receives revised certified data for an apportionment after the Director has approved the final version of the apportionment, the Service may recalculate the apportionment only if doing so would not reduce funds to other State fish and wildlife agencies.

§ 80.41 May the Director correct a Service error in apportioning funds?

Yes. The Director may correct any error that the Service makes in apportioning funds.

Subpart E—Eligible Activities

4. Amend § 80.50 by:

- a. Revising paragraph (a)(6);
- b. Adding paragraphs (a)(9) and (10);
- c. Redesignating paragraph (b)(2) as paragraph (b)(3); and
- d. Adding new paragraph (b)(2) and paragraph (c)(6).

The revisions and additions read as follows:

§ 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

* * * * *

(a) * * *

(6) Build structures or acquire equipment, goods, and services to:

- (i) Restore, rehabilitate, or improve lands and waters as wildlife habitat; or
- (ii) Provide public access for hunting or other wildlife-oriented recreation.

(iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and services under an award, with emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.

* * * * *

(9) Provide technical assistance.

(10) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

- (i) Required by State or local law; and
- (ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(b) * * *

(2) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

* * * * *

(c) * * *

(6) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

5. Amend § 80.51 by revising paragraph (a)(8) and adding paragraphs (a)(12) and (13) to read as follows:

§ 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish

Restoration Act?

* * * * *

(a) * * *

(8) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve aquatic habitat for sport fish, or land as a buffer to protect aquatic habitat for sport fish; or

(ii) Provide public access for sport fishing.

(iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and services under an award, with emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.

* * * * *

(12) Provide technical assistance.

(13) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

* * * * *

Subpart F—Allocation of Funds by an Agency

6. Amend § 80.60 by revising the introductory text and adding a heading to the table to read as follows:

§ 80.60 What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?

The relationship between the Basic Hunter Education and Safety subprogram (Basic Hunter Education) and the Enhanced Hunter Education and Safety program (Enhanced Hunter Education) is in table 1 to § 80.60:

Table 1 to § 80.60

* * * * *

Subpart G—Application for a Grant

7. Amend § 80.82 by:

a. Revising paragraph (c)(2);

b. Redesignating paragraphs (c)(3) through (13) as paragraphs (c)(4) through (14);

c. Adding a new paragraph (c)(3); and

d. Revising newly designated paragraphs (c)(9)(iii) through (v) and (c)(10).

The revisions and addition read as follows:

§ 80.82 What must an agency submit when applying for a project-by-project grant?

* * * * *

(c) * * *

(2) *Purpose*. State the purpose and base it on the need. The purpose states the desired outcome of the proposed project in general or abstract terms.

(3) *Objectives*. State the objectives and base them on the need. The objectives state the desired outcome of the proposed project in terms that are specific and quantified.

* * * * *

(9) * * *

(iii) Request the Regional Director's approval for the additive or matching method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need when using program income as match.

(iv) Indicate whether the agency wants to treat program income that it earns after the grant period as either license revenue or additional funding for purposes consistent with the grant terms and conditions or program regulations.

(v) Indicate whether the agency wants to treat program income that the subgrantee earns as license revenue, additional funding for the purposes consistent with the grant or subprogram, or income subject only to the terms of the subgrant agreement.

(10) *Budget narrative*. (i) Provide costs by project and subaccount with additional information sufficient to show that the project is cost effective. Agencies may obtain the subaccount numbers from the Service's Regional Division of Wildlife and Sport Fish Restoration.

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are preaward costs, capital improvements or expenditures, real property acquisitions, or equipment purchases.

(iii) Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments.

* * * * *

Subpart H—General Grant Administration

8. Revise § 80.97 to read as follows:

§ 80.97 May an agency barter goods or services to carry out a grant-funded project?

Yes. A State fish and wildlife agency may barter to carry out a grant-funded project. A barter transaction is the exchange of goods or services for other goods or services without the use of cash. Barter transactions are subject to the cost principles at 2 CFR part 200.

9. Amend § 80.98 by revising paragraph (a) introductory text and adding a heading to the table in paragraph (a) to read as follows:

§ 80.98 How must an agency report barter transactions?

(a) A State fish and wildlife agency must follow the requirements in table 1 to § 80.98(a) when reporting barter transactions in the Federal financial report:

Table 1 to § 80.98(a)

* * * * *

Subpart I—Program Income

10. Revise § 80.120 to read as follows:

§ 80.120 What is program income?

(a) Program income is gross income received by the grantee or subgrantee and earned only as a result of the grant during the grant period. Upon request from the State agency and approval of the Service, the option at 2 CFR 200.307(b) may be allowed.

(b) Program income includes revenue from any of the following:

(1) Services performed under a grant.

(2) Use or rental of real or personal property acquired, constructed, or managed with grant funds.

(3) Payments by concessioners or contractors under an arrangement with the agency or subgrantee to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds.

(4) Sale of items produced under a grant.

(5) Fees collected by the agency for delivering or providing hunter education, aquatic education, or other courses.

(6) Royalties and license fees for copyrighted material, patents, and inventions developed as a result of a grant.

(7) Sale of a product of mining, drilling, forestry, or agriculture during the period of a grant that supports the:

(i) Mining, drilling, forestry, or agriculture; or

(ii) Acquisition of the land on which these activities occurred.

(c) Program income does not include any of the following:

(1) Interest on grant funds, rebates, credits, discounts, or refunds.

(2) Sales receipts retained by concessioners or contractors under an arrangement with the agency to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds.

(3) Cash received by the agency or by volunteer instructors to cover incidental costs of a hunter education, aquatic education, or other classes. Incidental costs are small amounts and typically not essential to the training delivery. Materials purchased at cost by the student, separate from course fees, are incidental costs.

(4) Cooperative farming or grazing arrangements as described at § 80.98.

(5) Proceeds from the sale of real property, equipment, or supplies.

11. Revise § 80.123 to read as follows:

§ 80.123 How may an agency use program income?

(a) A State fish and wildlife agency may choose any of the three methods listed in paragraph (b) of this section for applying program income to Federal and non-Federal outlays. The agency may also use a combination of these methods. The method or methods that the agency chooses will apply to the program income that it earns during the grant period and to the program income that any subgrantee earns during the grant period. The agency must indicate the method or methods that it wants to use in the project statement that it submits with each application for Federal assistance.

(b) Program income must be spent within the grant period and program in which it is earned and before requesting additional Federal funds for the activity for which the program income is earned.

(c) The three methods for applying program income to Federal and non-Federal outlays

are in table 1 to § 80.123(c):

Table 1 to § 80.123(c)

Method	Requirements for using method
(1) Deduction	(i) The agency must deduct the program income from total allowable costs to determine the net allowable costs. (ii) The agency must use program income for current costs under the grant unless the Regional Director authorizes otherwise. (iii) If the agency does not indicate the method that it wants to use in the project statement, then it must use the deduction method.
(2) Addition	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency may add the program income to the Federal and non-Federal funds under the grant. (iii) The agency must use the program income for the purposes of the grant and under the terms of the grant.
(3) Cost sharing or matching	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency must explain in the project statement the expected program income, how the agency proposes to use the program income to satisfy matching requirements, how the agency will use program income earned in excess of required match, and the primary conservation or recreation objective sufficient to show program income as a secondary benefit. (iii) If neither the agency's project statement nor the award indicates how program income in excess of matching requirements will be applied, the agency must use the deduction method.

12. Revise § 80.124 to read as follows:

§ 80.124 How may an agency use unexpended program income?

A State fish and wildlife agency must spend program income before requesting additional payments under an award. If the agency has unexpended program income on its final Federal financial report, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the income.

Subpart J—Real Property

13. Revise § 80.137 to read as follows:

§ 80.137 What if real property is no longer useful or needed for its original purpose?

If the director of the State fish and wildlife agency and the Regional Director jointly decide that real property acquired with grant funds is no longer useful or needed for its original purpose under the grant, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or

(b) Follow the regulations at 2 CFR 200.311 and consult with the Regional Director on how to treat proceeds from the disposition of real property.

Subpart L—Information Collection

14. Amend § 80.160 by revising paragraphs (a)(4), (5), and (7), (b), and (c) to read as follows:

§ 80.160 What are the information collection requirements of this part?

(a) * * *

(4) Provide a project statement that describes the need, purpose and objectives, results or benefits expected, approach, geographic location, explanation of costs, and other information that demonstrates that the project is eligible under the Acts and meets the requirements of the Federal Cost Principles and the laws, regulations, and policies applicable to the grant program (OMB Control Number 1018–0100).

(5) Change or update information provided to the Service in a previously approved

application (OMB Control Number 1018–0100).

* * * * *

(7) Report as a grantee on progress in completing the grant-funded project (OMB Control Number 1018–0100).

(b) The authorizations for information collection under this part are in the Acts and in 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

(c) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 5275 Leesburg Pike, MS: BPHC, Falls Church, Virginia 22041–3803.

Dated: August 15, 2019.

Ryan Hambleton

Deputy Assistant Secretary for Fish and Wildlife and Parks

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